

CUSTOMS BULLETIN AND DECISIONS

**Weekly Compilation of
Decisions, Rulings, Regulations, and Notices
Concerning Customs and Related Matters of the
U.S. Customs Service
U.S. Court of Appeals for the Federal Circuit
and
U.S. Court of International Trade**

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This issue contains:

U.S. Customs Service

T.D. 96-6 Through 96-10

General Notices

**DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE**

NOTICE

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U.S. Customs Service

Treasury Decisions

19 CFR Part 162

(T.D. 96-6)

RIN 1515-AB72

SEARCH WARRANTS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by removing a regulation limiting the authority of Customs officers to whom search warrants are issued. The current regulation restricts such officers from removing letters, documents and other records in certain circumstances. The regulation is inconsistent with the current state of the law.

EFFECTIVE DATE: February 5, 1996.

FOR FURTHER INFORMATION CONTACT: Lars-Erik Hjelm, Office of the Chief Counsel, at 202-927-6900.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 162.14 of the Customs Regulations (19 CFR 162.14) provides that Customs officers to whom a search warrant is issued may not remove letters, other documents and records during the execution of the warrant, unless such letters, other documents and records are instruments of crime which are seized pursuant to a lawful arrest. When it was drafted, the statutory basis for this regulation was found in section 595 of the Tariff Act of 1930 (19 U.S.C. 1595). Until 1986, section 595 only authorized Customs to obtain warrants for merchandise.

In 1986, section 595 was expanded to allow Customs to seize " * * * any document * * * which is evidence of a violation * * * of any * * * law enforced or administered by the United States Customs Service." Pub. L. 99-570, Title III, § 3122, 100 Stat. 3207-87.

In addition to section 595, section 589 of the Tariff Act of 1930 (19 U.S.C. 1589a(2)), provides expanded authority for Customs officers

with warrants to seize documents. Section 589 provides Customs officers with authority to execute and serve any warrant issued under the authority of the United States. As a search warrant issued under Rule 41 of the Federal Rules of Criminal Procedure (Fed. R. Crim. P., Rule 41, 18 U.S.C. App.) can now be issued for, among other things, documents constituting evidence of crimes (See *United States v. Thompson*, 495 F. 2d 165 (D.C. Cir 1974); *United States v. Michaelian*, 803 F. 2d 1042 (9th Cir. 1986)), it is clear that section 589 read in conjunction with Rule 41 provides Customs officers with authority to search for and seize documentary evidence. Further, the Supreme Court has made it clear that officers may seize incriminating evidence during the course of a lawful search. *Horton v. California*, 496 U.S. 128 (1990).

Inasmuch as section 162.14 of the Customs Regulations, no longer reflects the state of the law regarding the search and seizure authority of Customs officers, Customs proposed removing the regulation in a Notice of Proposed Rulemaking published in the Federal Register on July 12, 1995 (60 FR 35881). A correction document regarding the notice was published in the Federal Register (60 FR 37856) on July 24, 1995.

DETERMINATION

No comments were received in response to the Notice of Proposed Rulemaking. After further review, Customs has determined to proceed with the removal of section 162.14, Customs Regulations (19 CFR 162.14).

REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and based upon the information set forth above, it is certified that the removal of § 162.14 will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

This document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

DRAFTING INFORMATION

The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

LIST OF SUBJECTS IN PART 162

Administrative practice and procedure, Customs duties and inspection, Drug traffic control, Exports, Law enforcement, Marijuana, Penalties, Reporting and recordkeeping requirements, Search warrants, Seizures and forfeitures.

AMENDMENT TO THE REGULATIONS

For the reasons set forth in the preamble, part 162 of the Customs Regulations is amended as set forth below.

**PART 162—RECORDKEEPING, INSPECTION,
SEARCH AND SEIZURE**

1. The general authority for part 162 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624.

2. Section 162.14 is removed.

WILLIAM F. RILEY,
Acting Commissioner of Customs.

Approved: December 28, 1995.

JOHN P. SIMPSON,

Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, January 4, 1996 (61 FR 258)]

(T.D. 96-7)

TARIFF CLASSIFICATION OF IMPORTED GLASSWARE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Change of practice.

SUMMARY: This document sets forth Customs position regarding the scope of three classes of imported glassware: "containers of glass used for the conveyance or packing of goods", "preserving jars of glass" and "glass storage articles". As part of Customs efforts to clearly and completely inform importers with regard to classification issues, it has been determined advisable to set forth guidelines which Customs will consider when determining whether merchandise falls within a particular class or kind of glassware.

EFFECTIVE DATE: Any changes in tariff classification resulting from the implementation of these guidelines and any revocation of inconsistent rulings will be effective regarding merchandise entered for consumption or withdrawn from a warehouse for consumption on or after February 2, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Beth McLoughlin, Metals and Machinery Classification Branch, Office of Regulations and Rulings (202) 482-7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

By notice published in the Federal Register (59 FR 51659) on October 12, 1994, Customs proposed a change of practice involving the tariff

classification of three classes of imported glass articles under the Harmonized Tariff Schedule of the United States (HTSUS). That notice examined subheadings 7010.90.50 and 7013.39, HTSUS, which read as follows:

- | | |
|------------|--|
| 7010.90.50 | carboys, bottles, flasks, jars, pots, vials, ampoules and other containers, of glass, of a kind used for the conveyance or packing of goods; preserving jars of glass; stoppers, lids and other closures, of glass: other: other containers (with or without their closures) |
| 7013.39 | glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): glassware of a kind used for table, (other than drinking glasses) or kitchen purposes other than that of glass-ceramics: other |

There are two types of classification by use:

- (1) according to the use of the class or kind of goods to which the imported article belongs; and
- (2) according to the actual use of the imported article.

Use according to the class or kind of goods to which the imported article belongs is more prevalent in the tariff schedule. A few tariff provisions expressly state that classification is based on the use of the class or kind of goods to which the imported article belongs. However, in most instances, this type of classification is inferred from the language used in a particular provision.

If an article is classifiable according to the use of the class or kind of goods to which it belongs, Additional U.S. Rule of Interpretation 1(a), HTSUS, provides that in the absence of special language or context which otherwise requires, a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use. In other words, the article's principal use at the time of importation determines whether it is classifiable within a particular class or kind.

While Additional U.S. Rule of Interpretation 1(a), HTSUS, provides general criteria for discerning the principal use of an article, it does not provide specific criteria for individual tariff provisions. However, the U.S. Court of International Trade (CIT) has provided factors, which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: general physical characteristics, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use. See: *Kraft, Inc. v. United States*, USITR, 16 CIT 483, (June 24, 1992) (hereinafter *Kraft*); *G. Heilman Brewing Co. v. United States*, USITR, 14 CIT 614 (Sept. 6, 1990);

and *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), *cert. denied*, 429 U.S. 979.

Tariff classification of goods controlled by actual use is specifically provided for in sections 10.131-10.139, Customs Regulations [19 CFR 10.131-10.139]. According to these regulations, an actual use provision is satisfied if: (1) such use is intended at the time of importation, (2) the article is so used, and (3) proof of such use is furnished within three years after the date the article has been entered.

Currently, tariff classification under both subheadings 7010.90.50 and 7013.39, HTSUS, is determined by the use of the class or kind of articles to which the imported merchandise belongs. As such, they are considered provisions controlled by Additional U.S. Rule of Interpretation 1(a), HTSUS.

Customs proposed that subheadings 7010.90.50 and 7013.39 would remain principal use provisions. Therefore, for an imported good to be classifiable in either of these subheadings, it must be of a class or kind classifiable in these subheadings. Whether it is of the class or kind of articles classifiable in either subheading will be determined by its principal use. Principal use will, in turn, be determined by the specific criteria formulated to determine to what class or kind the imported goods belong.

In formulating the criteria, Customs considered its prior headquarters ruling letters and court cases, comments from the public and the Harmonized Commodity Description and Coding System Explanatory Notes (ENs). The ENs, although not dispositive, or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of the HTSUS. *See*, T.D. 89-90, 54 F.R. 35127, 35128 (August 23, 1989). Based on the plain language of the provision, Customs proposed that subheading 7010.90.50 includes the classes "glass containers of a kind used for the conveyance or packing of goods" and "preserving jars of glass".

CONTAINERS OF A KIND USED FOR THE CONVEYANCE OR PACKING OF GOODS

Customs proposed understanding of the principal use of this class and the factors which indicate acceptance of a particular article in the class, was that together, they provided specific identifiable characteristics which are indicative, but not conclusive of whether a particular glass article qualifies as part of the class "containers of glass of a kind used for the conveyance or packing of goods". These characteristics would include, containers, of all shapes and sizes:

1. generally having a large opening, a short neck (if any) and as a rule, a lip or flange to hold the lid or cap, made of ordinary glass (colorless or colored) and manufactured by machines which automatically feed molten glass into molds where the finished articles are formed by the action of compressed air;
2. in which the ultimate purchaser's primary expectation is to discard the container after the conveyed or packed goods are used;

3. sold from the importer to a wholesaler/distributor who then packs them with goods;
4. sold in an environment of sale that features the goods packed in the jar and not the jar itself;
5. used to commercially convey foodstuffs, beverages, oils, meat extracts, etc.,;
6. capable of being used in the hot packing process; and
7. recognized in the trade as used primarily to pack and convey goods to a consumer who then discards the container after this initial use.

Customs proposed that the physical characteristics of a particular glass article are the primary indicator of whether it belongs to the class "containers of a kind used for the conveyance or packing of goods". Additionally, we noted that whether a particular container is capable of being used in the "hot packing" process, is of limited utility when determining whether it is classifiable as a container of a kind used for the conveyance or packing of goods. Finally, Customs proposed one additional factor: that glass containers imported without their corresponding caps or lids was a physical characteristic that indicates that particular containers will be used for the conveyance or packing of goods.

PRESERVING JARS OF GLASS

Customs proposed that the principal use for the class "preserving jars of glass" is jars purchased and used for home canning only. Further, there are identifiable characteristics that are indicative, but not conclusive of the principal use of glass jars classifiable as "preserving jars of glass".

These would include glass articles of any shape that are between .23 and 2.2 liter sizes, and are the shape and height of regular and wide-mouth "Mason-type", threaded, home-canning jars with self-sealing lids. Generally, the standard jar mouth opening is about 2 $\frac{3}{8}$ inches with wide mouth jars having 3 inch openings. "Mason-type" jars have narrower sealing surfaces and are tempered less than most commercial pint and quart-size jars. The common self-sealing lid consists of a flat metal lid held in place by a metal screw band during processing. The flat lid is crimped around its bottom edge to form a trough, which is filled with a colored gasket compound. Glass articles with wire bails and glass or porcelain caps or lids were considered not classifiable as "preserving jars of glass" as their physical characteristics do not allow them to be recommended for home canning use.

GLASSWARE OF A KIND USED FOR TABLE OR KITCHEN PURPOSES: GLASS STORAGE ARTICLES

Based on the plain language of the heading, Customs stated that sub-heading 7013.39 provides for the class "glassware of a kind used for table or kitchen purposes". This class includes articles principally used to hold or store other articles in the home. Furthermore, among these articles, certain glass storage jars may also be principally used in this fashion. Therefore, Customs proposed that glass articles which are

principally used to store articles in the home are classifiable under sub-heading 7013.39 and identified the following characteristics which were indicative, but not conclusive of glassware of a kind used for table or kitchen purposes; glass household storage articles. They are glass articles:

1. made of ordinary glass, lead crystal glass, glass having a low coefficient of expansion (e.g., borosilicate glass) or of glass ceramics (the latter two in particular, for kitchen glassware). They may also be colorless, colored or of flashed glass, and may be cut, frosted, etched or engraved;
2. having a decorative motif consistent with a kitchen decor (e.g., geese, "country theme", etc.);
3. which the consumer purchases primarily to use for storage in the home;
4. sold from the importer to a wholesaler/distributor who then sells them to a retailer;
5. sold in an environment of sale that emphasizes the article's use or reuse as a storage article;
6. sold to the ultimate purchaser empty;
7. which are recognized in the trade as primarily having a household storage use; and
8. which are imported with their caps or lids.

ANALYSIS OF COMMENTS

Six comments were received in response to the notice, four from importing interests and two from domestic manufacturers of glassware. Substantive legal arguments contained in the comments are discussed below.

RELATIVE SPECIFICITY OF HEADINGS 7010 AND 7013

Regarding the classification of glass articles capable of both conveyance or packing of goods and household storage, a commenter has suggested that the question of classification is determined not by a use comparison, but by the specific statutory exclusion of articles classifiable in heading 7010 from classification in heading 7013. According to the commenter, the language in heading 7013 excludes all merchandise described in heading 7010. Therefore, heading 7013's relative specificity is well indicated by the statutory language itself.

Customs agrees that the language of heading 7013 excludes from classification articles classifiable in heading 7010. However, that language is qualified by the holding of *Group Italglass U.S.A. v. United States*, 17 CIT 226. In that case, the CIT specifically held that: "[t]he language in heading 7010, 'of a kind used for' explicitly invokes use as a criterion for classification **and under heading 7010 principal use is controlling.**" *Id* at 228. As both headings contain the language 'of a kind used for', Customs position is that the principal use of a particular article will determine whether it belongs to one of the classes or kinds described by heading 7010, or heading 7013. Principal use of a particular article will, in turn, be determined by the specific criteria formulated for the classes or kinds described in headings 7010 and 7013.

Should it be determined that the principal use of a particular article indicates it is classifiable within a class or kind provided for in heading 7010 the language of heading 7013 precludes that particular article from classification in heading 7013. Should it be determined that the principal use of a particular article indicates that it does not belong to a class or kind provided for in heading 7010, it is not precluded from classification in heading 7013.

CONTAINERS OF A KIND USED FOR THE
CONVEYANCE OR PACKING OF GOODS

Application of the proposed criteria:

Several commenters indicated concern that the various criteria provided would be applied as "bright line" rules.

Customs position is that generally, the principal use criteria provided **are merely characteristics, indicators of, or tools to indicate**, whether a specific piece of glassware is principally used in the same manner as the class or kind the criteria describe. Additionally, the statement that the principal use criteria are merely indicative and not conclusive, clearly demonstrates that the characteristics are guidelines and not a "litmus test" or "bright line" rules for classification purposes.

As a general rule, a glass article's **physical form** will indicate its principal use and thus to what class or kind it belongs. Examples of characteristics indicative, but not conclusive of, the physical form of articles belonging to the class or kind "containers of a kind used for the conveyance or packing of goods" are enumerated in EN 70.10 and under the "physical characteristics" criteria. Should, however, an exception arise and an article's physical form does not indicate to what class or kind it belongs or its physical form indicates it belongs to more than one class or kind, Customs considers the other enumerated principal use criteria.

Physical description:

It has been suggested that the first criterion, the physical characteristics of the class "containers of glass used for the conveyance or packing of goods" is too narrow for the entire class. Rather, the entire class includes 4 different types of containers used for the commercial conveyance of liquid and solid products. These types are described in the ENs to heading 7010, and include:

(A) Carboys, demijohns, bottles (including syphon vases), phials, and similar containers * * * of all shapes and sizes * * * used as containers for * * * (see list).

(B) Jars, pots, and similar containers * * * used for the commercial conveyance of certain foodstuffs, cosmetic or toilet preps, pharmaceutical products, polishes, cleaning preps etc.

(C) Ampoules usually obtained from drawn glass and intended to serve after sealing as containers for serums, etc.

(D) Tubular containers and similar containers * * *

Additional descriptions of how each kind of container or jar is produced, its typical closure design and decorative features are included in these

breakouts. Based on these expressed concerns, it has been suggested that reference to the ENs with an explanation, should replace this criterion. Customs agrees with the commenters' observations and reiterates its position that the physical description provided in the proposed notice, together with the descriptions found in EN 70.10, are indicative, but not conclusive, physical characteristics of glass articles belonging to the class "containers of a kind used for the conveyance or packing of goods".

Ultimate purchaser's expectation:

A commenter has suggested that this criterion be eliminated because the language " * * * discard containers after use" prevents recyclable containers from classification as containers of a kind used for the conveyance or packing of goods.

Customs position is that for heading 7010 purposes, the term "discards" in the phrase " * * * to convey or pack a product to a consumer who uses the product and then discards the container" includes glass articles otherwise described as "containers" which are "discarded" for recycling.

Importer-wholesaler/distributor:

A commenter has suggested that this criterion is a misapplication of Additional U.S. Rule of Interpretation 1(a) because it refers to the distribution by "importers". The commenter indicates that Additional U.S. Rule 1(a) states that review applies to all goods of the class or kind, whether imported or not. Additionally, the commenter contends that this criterion suggests the application of actual use to the classification of glassware. Finally, the commenter requests guidance on what evidence Customs would expect importers to provide regarding channels of trade.

Customs agrees with the comments regarding Additional U.S. Rule of Interpretation 1(a). Additionally, Customs position is that this criterion is an explanation of the pattern or channel of trade that goods of this class generally follow. While not all goods of this class follow this channel of trade, Customs believes that enough do for this pattern to be considered indicative but not conclusive of articles belonging to the class. Finally, Customs believes evidence will be solicited on a case-by-case basis.

Environment of sale/channel of trade:

According to one commenter, this criterion ignores the commercial realities of the food and beverage market in that containers are often a vehicle used by the packager to differentiate its product from others.

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (GRIs). GRI 1, states, in pertinent part, that for legal purposes, classification shall be determined according to the terms of the headings and any heading or chapter notes. While the "commercial realities" of the glass container market may require redesign of glass articles, for tariff classification purposes, the applica-

tion of the GRIs together with Additional U.S. Note 1(a), requires that if the article's form is altered in a way that no longer indicates it is **principally** used as a container, it must be reclassified. While, as **one** of its uses, a glass article may be used to pack and convey a good to a consumer, that use must be its **principal** one for it to belong to the class "glass articles of a kind used for the conveyance or packing goods".

Lids:

Commenters claim that Customs addition of a factor relating to the importation of lids with containers is in direct conflict with the statutory language of heading 7010, which states, in pertinent part, * * * "with or without their lids". They believe that the heading language makes it clear that Congress intended that closures be disregarded when determining the class of a given container. Additionally, use of this criterion could lead to a container being classified differently depending upon whether it was imported with or without a lid. Finally, they assert that this is, in effect, an actual use test.

Instead of reviewing lids, the commenters suggest considering a container's finish, the portion of the container where the cap or lid will be attached. Designs include threaded, beaded and a variety of other finishes. Because closures are created to match standard finishes, the commenters suggest that the proposed criterion should state that all containers with a "standard finish" are classifiable as containers used for the conveyance or packing of goods.

The commenters agree that it is generally true that containers for the conveyance or packing of goods are imported without their lids. They believe, however, that there is a danger of undue focus on the presence or absence of a lid, as a lid's presence or absence is one of the easily identifiable criteria. Finally, this criterion would increase the possibility that drinking glasses which are always imported without lids, would be classified incorrectly.

Finally, one commenter has requested that Customs clarify its distinction by stating that the absence of lids or caps is only a "plus" factor pointing toward classification in heading 7010, but that the presence of a lid or cap in no way points against heading 7010 classification. The commenter then suggests that ultimately, the absence or presence of a lid does not affect the "reusability" or "function" of a container and therefore should not carry much weight in determining a container's classification.

After careful consideration of the comments, Customs withdraws this criterion.

PRESERVING JARS OF GLASS

Class or kind vs. eo nomine:

One commenter disagrees with Customs characterization of preserving jars of glass as a use provision and instead claims that the provision is *eo nomine*. According to the commenter, the general rule for classification under an *eo nomine* provision is that the provision includes all

forms of the named article. The commenter further states that bail and trigger jars are well known in commerce as having been designed for use in the preserving of foodstuffs. Therefore, it is irrelevant whether the jars are principally used as such.

As previously discussed in the relative specificity section, Customs position is that *Italglass* requires the application of principal use to all classes in heading 7010.

Scope of the class "preserving jars of glass":

Another commenter argues that Customs definition of preserving jars of glass as home canning jars is too restrictive. Customs definition was: to prepare food for future use, as by canning or salting to treat fruit or other foods so as to prevent decay. The commenter suggests a broader definition: preserving means "food preservation". Food preservation should be defined as the protection of food from spoilage. Therefore, any glass container used to protect food from spoilage is a preserving jar.

Customs is of the opinion that its proposed definition is the common dictionary and trade definition of preserving. Customs does not agree with the commenter's definition of preserving as it is entirely too broad. EN 70.10's inclusion of the phrase "*** Jars, pots, and similar containers *** used for the commercial conveyance of certain foodstuffs" clearly indicates that not all glass articles capable of protecting food from spoilage belong to the class "preserving jars of glass". This language and application of the ENs clearly indicate that the commenter's broad definition was not the intent of the EN drafters. Furthermore, Congress' adoption of a separate class for preserving jars, clearly demonstrates their intent to narrow the scope of both the conveyance and packing provision and the preserving jar provision.

USDA bulletin:

Several commenters state that Customs should not rely on the U.S. Department of Agriculture, Extension Service, Complete Guide to Home Canning: Guide 1 Principals of Home Canning (Agricultural Information Bulletin No. 539-1, May 1989), [USDA bulletin] because it does not explain why bail and trigger jars are not recommended for home canning. They suggest that replacement gaskets may no longer be manufactured for use with the jars and that a higher risk of contamination exists with these jars because they have to be sealed by pushing down the clamp after being removed from the canner. Also, reliance on the USDA pamphlet is severely limited by the findings of *Nestle Refrigerated Food Co. v. United States*, U.S. CIT, Slip Op. 94-118 (July 20, 1994). The court stated that administrative interpretations not related to tariff purposes are not determinative of Customs classification disputes. Reference is also made to different sources on preserving which indicate bail and trigger jars are usable for home canning purposes.

One commenter suggests that the following should be the standards for preserving jars:

1. The jars are specifically designed, as evidenced by patents or other reliable documents, for use as home canning or preserving jars;
2. Instructions for using the jars in the home preserving process are provided; and
3. Rubber seals or lids are readily available at the start of each home canning season from the sources where the consumer purchased the jars.

Customs position is that reliance on the USDA bulletin does not conflict with the holding of *Nestle Refrigerated Food Co. v. United States*. The definition of preserving, was not provided by the USDA bulletin, but rather by consulting the dictionary and the common and commercial meaning. A tariff term that is not defined in the HTSUS or in the ENs is construed in accordance with its common and commercial meaning. *Nippon Kogasku (USA) Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982). Customs has cited the USDA bulletin because various home canning nutritionists and food scientists consulted stated that the USDA bulletin provided the guidelines that home canners, and those who create the necessary jars, rely on to create the preserves as well as the jars themselves.

Moreover, Customs has independently reviewed the scientific studies relied upon for the conclusion drawn regarding wire and bail trigger glass jars in the USDA bulletin. Customs position is that the scientific evidence supports the conclusion that wire bail and trigger jars should not be principally used as home canning jars. Therefore, the jars cannot be classified as such.

GLASSWARE OF A KIND USED FOR
TABLE OR KITCHEN PURPOSES: GLASS STORAGE ARTICLES

Scope of heading 7013:

One commenter states that Customs misunderstands the scope of heading 7013. That commenter believes that none of the exemplars in EN 70.13 relate to the holding or storage of any article in the home. Rather, the commenter contends that all but one of the articles listed in EN 70.13(1) are articles which are used to prepare and serve food. Therefore, glass household storage articles are not classifiable in heading 7013.

As further evidence that glass household articles are not classifiable in heading 7013, the commenter cites to heading 6911 and claims that headings 7013 and 6911 are *ejusdem generis* and therefore their ENs should "mirror" each other. However, the commenter notes, EN 69.11, specifically provides for storage jars. Because EN 70.13 does not, the commenter believes it was the drafters intent to omit glass household

storage articles from heading 7013. The commenter suggests that the drafters clearly included ceramic preserving jars and storage jars within the scope of headings 6911 and 6912, and excluded them from heading 6909. According to the commenter, the similarity to the exemplars in ENs 69.11, 69.12 and 70.13 is striking. Therefore, the omission of preserving and storage jars from EN 70.13 is significant. The commenter believes that glass storage jars are included in the scope of glass preserving jars and states that this follows from the fact that the storage of food products prevents spoilage (drawing moisture, infestation with vermin, etc.).

Customs position is that the exemplars from EN 70.13 are merely that, examples. They are not all inclusive. Additionally, Customs believes that the following EN 70.13 exemplars all are used to store various food stuffs or articles in the home:

(1) Table or kitchen glassware, e.g. *** decanters, infants' feeding bottles, pitchers, jugs, *** cake-stands, *** butter dishes, oil or vinegar cruets, *** salt cellars, *** sweetmeat boxes, graduated kitchenware, *** ice-buckets.

Furthermore, Customs believes that the commenter's direct comparison of the ENs 69.09, 69.11 and 69.12 to 70.10 and 70.13 was clearly not the intent of the EN authors. Were that the authors' intent, they would have applied the ENs for headings 69.09 and 69.13 *mutatis mutandis* to those of headings 70.10 and heading 70.13.

Customs position is that heading 7013 provides for glass storage articles within the class glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes.

Decorative motif:

One commenter was concerned because many household storage articles are very simple, strictly utilitarian and have no decorative motif. Because the criterion of a decorative motif is objective and easily determined, the commenter contends that there is a risk of it being given undue importance or becoming the sole criterion. Additionally, examples of specific decorative motifs are unacceptable because of a danger that household storage jars having unlisted motifs will be misclassified. Therefore, criterion 2 should be eliminated and the following be added to criterion 1: "painted or otherwise having a decorative motif". Customs agrees with the comment and has made the change.

Distribution channels:

One commenter was concerned about this criterion because while it may identify the most common distribution channels for articles imported for ultimate sale in the retail market, it excludes articles imported directly by large retail chains.

Customs recognizes that the distribution channel described is a general rule and does not preclude from consideration for this class glassware distributed through other channels.

Lids:

One commenter states that Customs lid criterion creates the expectation that heading 7013 articles are always imported with their lids. Although it is true that glass containers imported for use in conveying or packing goods are generally imported without their lids, it does not follow that table or kitchen storage containers are necessarily imported with their lids. The commenter believes the only clear statement that can be made about lids is that glass household storage articles are imported without their lids less frequently than are containers for the conveyance or packing of goods. As previously noted, this criterion has been withdrawn.

CONCLUSION

After careful review and consideration of all the comments received in response to the notice of proposed position, a review of Customs implementation of its prior understanding of the 3 classes and a review of Customs rulings, Customs adopts, with some modification, its proposed position.

SUBHEADINGS 7010.90.50 AND 7013.39; RELATIVE SPECIFICITY

Based on the *Italglass* holding, Customs concludes that the language "of a kind used for" explicitly indicates that the principal use of a particular article will determine whether it belongs to one of the classes or kinds described by heading 7010 or heading 7013. Principal use of a particular article will, in turn, be determined by the specific criteria formulated for the classes or kinds described in headings 7010 and 7013.

Should it be determined that the principal use of a particular article indicates it is classifiable within a class or kind provided for in heading 7010, the language of heading 7013 precludes that particular article from classification in heading 7013. Should it be determined that the principal use of a particular article indicates that it does not belong to a class or kind provided for in heading 7010, it is not precluded from classification in heading 7013.

CONTAINERS OF A KIND USED FOR THE
CONVEYANCE OR PACKING OF GOODS

Customs concludes that as a general rule, a glass article's physical form will indicate its principal use and thus to what class or kind it belongs. Examples of physical forms indicative, but not conclusive of, articles belonging to the class or kind "containers of a kind used for the conveyance or packing of goods" are enumerated in EN 70.10 and under the "physical characteristics" criterion. When an exception arises and an article's physical form does not indicate to what class or kind it belongs or its physical form indicates it belongs to more than one class or kind, Customs considers the other enumerated principal use criteria.

Customs concludes that generally, the principal use criteria provided **are merely characteristics, indicators of, or tools to indicate**, whether a specific piece of glassware is principally used in the same

manner as the class or kind the criterion describe. Further, Customs adopts the following criteria as indicative, but not conclusive of whether a particular glass article qualifies as part of the class "containers of glass of a kind used for the conveyance or packing of goods":

1. generally having a large opening, a short neck (if any) and as a rule, a lip or flange to hold the lid or cap, made of ordinary glass (colourless or coloured) and manufactured by machines which automatically feed molten glass into moulds where the finished articles are formed by the action of compressed air;
2. the ultimate purchaser's primary expectation is to discard/re-cycle the container after the conveyed or packed goods are used;
3. sold from the importer to a wholesaler/distributor who then packs the container with goods;
4. sold in an environment of sale that features the goods packed in the container and not the jar itself;
5. used to commercially convey foodstuffs, beverages, oils, meat extracts, etc.;
6. capable of being used in the hot packing process; and
7. recognized in the trade as used primarily to pack and convey goods to a consumer who then discards the container after this initial use.

PRESERVING JARS OF GLASS

Customs concludes that the term "preserving" is described, in pertinent part, as "to prepare food for future use, as by canning or salting; to treat fruit or other foods so as to prevent decay".

Based upon the above definition, the reliance on the guidelines espoused in the U.S. Department of Agriculture, Extension Service, Complete Guide to Home Canning: Guide 1 Principals of Home Canning (Agricultural Information Bulletin No. 539-1, May 1989), by various home canning nutritionists and food scientists consulted, and an independent review of the scientific evidence the USDA guidelines are based upon, Customs concludes that there are identifiable characteristics that are indicative, but not conclusive of the principal use of glass jars classifiable as "preserving jars of glass". They include glass articles that are between .23 and 2.2 liter sizes and are the shape, round or square, (eg: not multi-sided, faceted or decorated) and height of regular and wide-mouth "Mason-type" jars.

Generally, the standard jar mouth opening is about 2 3/8 inches with wide mouth jars having 3 inch openings. "Mason-type" jars have narrower sealing surfaces and are tempered less than containers belonging to the class "containers of a kind used for the conveyance or packing of goods". The common self-sealing lid consists of a flat metal lid held in place by a metal screw band during processing. The flat lid is crimped around its bottom edge to form a trough, which is filled with a colored gasket compound.

Customs concludes, therefore, that jars with wire bail and trigger closures are not included within the scope of the class "preserving jars of glass" but rather within the scope of the class "glassware of a kind used

for table or kitchen purposes" classifiable under heading 7013. The physical form of the wire bail and trigger jar indicates its principal use as a storage article.

GLASSWARE OF A KIND USED FOR
TABLE OR KITCHEN PURPOSES: GLASS STORAGE ARTICLES

Customs concludes that as a general rule, a glass article's physical form will indicate its principal use and thus to what class or kind it belongs. Examples of physical forms indicative, but not conclusive of, articles belonging to the class or kind "containers of a kind used for the conveyance or packing of goods" are enumerated in EN 70.13 and under the "physical characteristics" criterion. When an exception arises and an article's physical form does not indicate to what class or kind it belongs or its physical form indicates it belongs to more than one class or kind, Customs considers the other enumerated principal use criteria.

Customs concludes that heading 7013 includes the class "glass storage articles". Additionally, Customs adopts the following principal use criteria:

1. made of ordinary glass, lead crystal glass, glass having a low coefficient of expansion (e.g., borosilicate glass) or of glass ceramics (the latter two in particular, for kitchen glassware). They may also be colorless, colored or of flashed glass, and may be cut, frosted, etched, engraved, painted or otherwise have a decorative motif.
2. the consumer purchases primarily to use for storage;
3. sold from the importer to a wholesaler/distributor who then sells them to a retailer;
4. sold in an environment of sale that emphasizes the article's use or reuse as a storage article;
5. sold to the ultimate purchaser empty; and
6. recognized in the trade as primarily having a storage use.

EFFECT ON RULINGS: This document revokes Headquarters Ruling Letters, 951721 dated January 12, 1993; 952675 dated January 15, 1993; 953280 dated February 5, 1993; 951991 dated March 2, 1993; 954293 dated June 30, 1993; 954792 dated November 24, 1993; 953952 dated September 21, 1994, and any other rulings which are not consistent with these guidelines.

EFFECTIVE DATE: Any changes in tariff classification resulting from the implementation of these guidelines and any revocation of inconsistent rulings will be effective regarding merchandise entered for consumption or withdrawn from a warehouse for consumption on or after February 2, 1996.

GEORGE J. WEISE,
Commissioner of Customs.

Approved: November 29, 1995.

JOHN P. SIMPSON,

Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, January 3, 1996 (61 FR 223)]

(T.D. 96-8)

FOREIGN CURRENCIES

QUARTERLY RATES OF EXCHANGE:
JANUARY 1 THROUGH MARCH 31, 1996

Listed below are the buying rates certified for the quarter to the Secretary of the Treasury by the Federal Reserve Bank of New York under provisions of 31 U.S.C. 5151. These quarterly rates are applicable throughout the quarter except when the certified daily rates vary by 5 per centum or more. Such daily variances are published by the CIE on a weekly basis.

Country	Name of currency	U.S. dollars
Australia	Dollar	\$0.743300
Austria	Schilling	0.099010
Belgium	Franc	0.033898
Brazil	Cruzado	1.028489
Canada	Dollar	0.736540
China, P.R.	Renminbi yuan	0.119933
Denmark	Krone	0.179856
Finland	Markka	0.230548
France	Franc	0.203978
Germany	Deutsche mark	0.696670
Hong Kong	Dollar	0.129299
India	Rupee	0.028401
Iran	Rial	N/A
Ireland	Pound	1.605500
Israel	Shekel	N/A
Italy	Lira	0.000637
Japan	Yen	0.009623
Malaysia	Dollar	0.393499
Mexico	Peso	0.129955
Netherlands	Guilder	0.622084
New Zealand	Dollar	0.653500
Norway	Krone	0.157853
Philippines	Peso	N/A
Portugal	Escudo	0.006689
Singapore	Dollar	0.706364
South Africa, Republic of	Rand	0.274537
Spain	Peseta	0.008241
Sri Lanka	Rupee	0.018587
Sweden	Krona	0.150716
Switzerland	Franc	0.864080
Thailand	Baht (tical)	0.039698
United Kingdom	Pound	1.556500
Venezuela	Bolivar	0.003448

Dated: January 2, 1996.

FRANK CANTONE,
Chief,
Customs Information Exchange.

(T.D. 96-9)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON
QUARTERLY LIST FOR DECEMBER 1995

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday: Monday, December 25, 1995.

Greece drachma:

December 1, 1995	.....	\$0.004209
December 2, 1995	.....	.004209
December 3, 1995	.....	.004209
December 4, 1995	.....	.004206
December 5, 1995	.....	.004219
December 6, 1995	.....	.004211
December 7, 1995	.....	.004210
December 8, 1995	.....	.004207
December 9, 1995	.....	.004207
December 10, 1995	.....	.004207
December 11, 1995	.....	.004198
December 12, 1995	.....	.004175
December 13, 1995	.....	.004163
December 14, 1995	.....	.004189
December 15, 1995	.....	.004198
December 16, 1995	.....	.004198
December 17, 1995	.....	.004198
December 18, 1995	.....	.004219
December 19, 1995	.....	.004193
December 20, 1995	.....	.004186
December 21, 1995	.....	.004198
December 22, 1995	.....	.004200
December 23, 1995	.....	.004200
December 24, 1995	.....	.004200
December 25, 1995	.....	.004200
December 26, 1995	.....	.004211
December 27, 1995	.....	.004219
December 28, 1995	.....	.004188
December 29, 1995	.....	.004218
December 30, 1995	.....	.004218
December 31, 1995	.....	.004218

South Korea won:

December 1, 1995	.....	\$0.001299
December 2, 1995	.....	.001299
December 3, 1995	.....	.001299
December 4, 1995	.....	.001300
December 5, 1995	.....	.001299
December 6, 1995	.....	.001299
December 7, 1995	.....	.001299
December 8, 1995	.....	.001299

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for
December 1995 (continued):

South Korea won (continued):

December 9, 1995	\$0.001299
December 10, 1995	.001299
December 11, 1995	.001300
December 12, 1995	.001298
December 13, 1995	.001299
December 14, 1995	.001297
December 15, 1995	.001296
December 16, 1995	.001296
December 17, 1995	.001296
December 18, 1995	.001296
December 19, 1995	.001296
December 20, 1995	.001296
December 21, 1995	.001294
December 22, 1995	.001294
December 23, 1995	.001294
December 24, 1995	.001294
December 25, 1995	.001294
December 26, 1995	.001294
December 27, 1995	.001294
December 28, 1995	.001292
December 29, 1995	.001289
December 30, 1995	.001289
December 31, 1995	.001289

Taiwan N.T. dollar:

December 1, 1995	\$0.036550
December 2, 1995	.036550
December 3, 1995	.036550
December 4, 1995	.036617
December 5, 1995	.036643
December 6, 1995	.036630
December 7, 1995	.036630
December 8, 1995	.036630
December 9, 1995	.036630
December 10, 1995	.036630
December 11, 1995	.036617
December 12, 1995	.036617
December 13, 1995	.036603
December 14, 1995	.036603
December 15, 1995	.036590
December 16, 1995	.036590
December 17, 1995	.036590
December 18, 1995	.036563
December 19, 1995	.036576
December 20, 1995	.036576
December 21, 1995	.036576
December 22, 1995	.036643
December 23, 1995	.036643
December 24, 1995	.036643
December 25, 1995	.036643
December 26, 1995	.036630
December 27, 1995	.036630

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for December 1995 (continued):

Taiwan N.T. dollar (continued):

December 28, 1995	\$0.036643
December 29, 1995 .....	.036643
December 30, 1995 .....	.036643
December 31, 1995 .....	.036643

Dated: January 2, 1996.

FRANK CANTONE,
Chief,
Customs Information Exchange.

(T.D. 96-10)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR DECEMBER 1995

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in Treasury Decision 95-82 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday: Monday, December 25, 1995.

Mexico peso:

December 1, 1995	\$0.131926
December 2, 1995 .....	.131926
December 3, 1995 .....	.131926
December 4, 1995 .....	.131234
December 5, 1995 .....	.130208
December 6, 1995 .....	.130293
December 7, 1995 .....	.129702
December 8, 1995 .....	.128535
December 9, 1995 .....	.128535
December 10, 1995 .....	.128535
December 11, 1995 .....	.128866
December 12, 1995 .....	.128700
December 13, 1995 .....	.128246
December 14, 1995 .....	.127877
December 15, 1995 .....	.128700
December 16, 1995 .....	.128700
December 17, 1995 .....	.128700
December 18, 1995 .....	.128949
December 19, 1995 .....	.130039

FOREIGN CURRENCIES—Variances from quarterly rates for December 1995 (continued):

Mexico peso (continued):

December 20, 1995	\$0.132450
December 21, 1995	.131752
December 22, 1995	.131926
December 23, 1995	.131926
December 24, 1995	.131926
December 25, 1995	.131926
December 26, 1995	.132450
December 27, 1995	.130976
December 28, 1995	.130081
December 29, 1995	.129199
December 30, 1995	.129199
December 31, 1995	.129199

Sweden krona:

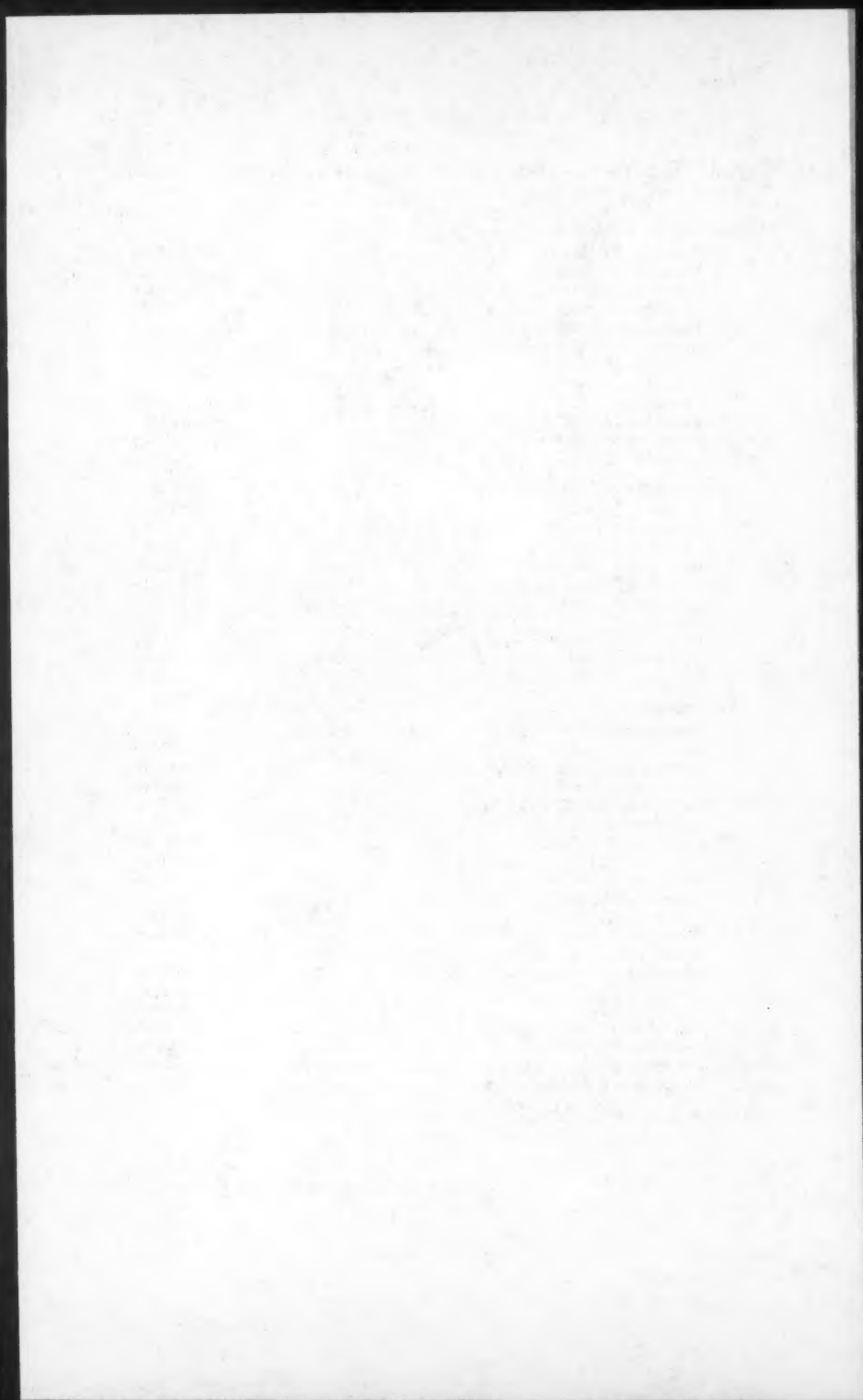
December 1, 1995	\$0.152964
December 2, 1995	.152964
December 3, 1995	.152964
December 4, 1995	.151860
December 5, 1995	.152718
December 6, 1995	.152207
December 15, 1995	.151217
December 16, 1995	.151217
December 17, 1995	.151217
December 18, 1995	.151400

Venezuela bolivar

December 12, 1995	\$0.003448
December 13, 1995	.003448
December 14, 1995	.003448
December 15, 1995	.003448
December 16, 1995	.003448
December 17, 1995	.003448
December 18, 1995	.003448
December 19, 1995	.003448
December 20, 1995	.003448
December 21, 1995	.003448
December 22, 1995	.003448
December 23, 1995	.003448
December 24, 1995	.003448
December 25, 1995	.003448
December 26, 1995	.003448
December 27, 1995	.003448
December 28, 1995	.003448
December 29, 1995	.003448
December 30, 1995	.003448
December 31, 1995	.003448

Dated: January 2, 1996.

FRANK CANTONE,
Chief,
Customs Information Exchange.



U.S. Customs Service

General Notices

PAPERLESS NOTIFICATION CONCERNING THE RECORDATION OF INTELLECTUAL PROPERTY RIGHTS INFORMATION

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice advises the public that the Intellectual Property Rights (IPR) Branch of Customs will no longer notify Customs officers and the public of trademark and copyright recordations through the issuance of paper circulars or directives, but rather that all such future notifications will be accomplished by means of the IPR module developed for the Automated Commercial System (ACS). Customs will furnish a print screen of the first page of IPR module text and a video image to interested members of the public upon request.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: John F. Atwood, Chief, Intellectual Property Rights Branch, Office of Regulations and Rulings, (202) 482-6960.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Prior to creating the Intellectual Property Rights (IPR) Task Force and IPR Branch, the principal vehicle for notifying Customs officers and the public of trademark and copyright recordations was through the issuance of paper "circulars" or "directives". During 1989-1990, an IPR module was developed for the Automated Commercial System (ACS) and the basic information and images on all outstanding recordations transferred to that program, along with the addition of all new recordations. Currently, that database is approaching 20,000 and more than 1,500 new recordations are added each year.

A comparative analysis of the existing paper recordation notification system with the paperless ACS/IPR module indicates that substantial monetary savings and increased efficiency will result by eliminating the paper system. Because of the ongoing conversion to Local Area Networks (LANs), Customs officers now have the ability to call up both the

text and images (in the case of word trademarks, an image may not be entered into the system). Accordingly, as of January 1, 1996, the IPR Branch in the Office of Regulations & Rulings will no longer issue paper circulars and directives concerning trademark and copyright recordings; the ACS/IPR module will become the sole tool for basic consultation on those matters.

As to the public availability of recordings, use of the Customs Electronic Bulletin Board (CEBB) ("Help" number (703) 440-6236) is encouraged. Text on the CEBB identifies the recorded trademark or copyright, its owner, a contact person, and whether the trademark or copyright receives so-called "gray market" import restriction. On a monthly basis, beginning with the July 17, 1991, edition, the CUSTOMS BULLETIN has published a brief reference of all trademark and copyright recordings (including all those recorded prior to July 17, 1991). Upon request, Customs officers will furnish a print screen of the first page of IPR module text for a trademark or copyright with any references to licensees in recordings prior to January 1, 1996, deleted. Beginning on January 1, 1996, recording texts will not include licensee information on the first page (not all recordings show licensees).

Since video images are not currently available through the CEBB, Customs officers will provide a relevant image upon request from the public.

In addition to financial savings, by narrowing the administration of trademark and copyright recordings to the one automated system, this will permit the IPR Branch to concentrate on improving and refining the ACS/IPR module. Substantive questions about disclosure and IPR recordings should be directed to the IPR Branch at (202) 482-6960.

Dated: January 2, 1996.

MICHAEL H. LANE,
Acting Commissioner of Customs.

[Published in the Federal Register, January 8, 1996 (61 FR 573)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, January 3, 1996.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

JOHN DURANT,
(for Stuart P. Seidel, Assistant Commissioner,
Office of Regulations and Rulings.)

REVOCATION OF CUSTOMS RULING LETTER RELATING TO
TARIFF CLASSIFICATION OF MOXIDECTIN

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling pertaining to the tariff classification of moxidectin technical concentrate (CAS# 113507-06-05). Notice of the proposed revocation was published on November 22, 1995, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after March 18, 1996.

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Food and Chemicals Classification Branch, (202-482-6958).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On November 22, 1995, Customs published a notice in the CUSTOMS BULLETIN, Volume 29, Number 47, proposing to revoke New York Ruling Letter (NYRL) 871563, dated March 20, 1992, which classified the merchandise, Moxidectin technical concentrate (CAS# 113507-06-5), within subheading 2932.90.5000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for heterocyclic compounds with oxygen hetero-atom(s) only, dutiable at 3.7 percent *ad valorem*. No comments were received in response to this notice.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking NYRL 871563 to reflect the proper classification of Moxidectin under subheading 2932.29.5050, HTSUSA, which provides for "Heterocyclic compound with oxygen heteroatom(s) only: Lactones: Other lactones: Other, Other" which is dutiable under the general column one rate of 3.7 percent *ad valorem*. Moxidectin is comprised of a heterocyclic compound with more than one functional group in the structure. Headquarters Ruling Letter (HRL) 956889 revoking NYRL 871563, is set forth in the Attachment to this document.

Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: January 2, 1996.

JOHN B. ELKINS,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, January 2, 1996.
CLA-2 RR:TC:FC 956889 ASM
Category: Classification
Tariff No. 2932.29.5050

MS. MARIANA DAVIDOVICH
MANAGER COMMERCIAL AFFAIRS
CYANAMID
LATIN AMERICAN GROUP
GOVERNMENT & COMMERCIAL AFFAIRS
One Cyanamid Plaza
Wayne, NJ 07470

Re: Revocation of NYRL 871563 concerning the tariff classification of moxidectin technical concentrate (CAS# 113507-06-5).

DEAR MS. DAVIDOVICH:

This letter concerns the revocation of New York Ruling Letter (NYRL) 871563, dated March 20, 1992, regarding the classification of moxidectin technical concentrate (CAS# 113507-06-5). Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Implementation Act, Pub. L. 103-182, 107 Stat 2057, 2186 (1993) (hereinafter section 625), notice of the proposed revocation of NYRL 871563, was published on November 22, 1995, in the CUSTOMS BULLETIN, Volume 29, Number 47.

Facts:

The subject product is identified as moxidectin technical concentrate and is imported from Argentina to be used as an anti-parasitic drug. In NYRL 871563, the merchandise was

classified within subheading 2932.90.5000, Harmonized tariff Schedule of the United States Annotated (HTSUSA), which provides for heterocyclic compounds with oxygen hetero-atom(s) only, dutiable at 3.7 percent *ad valorem*.

At this time, your company is asserting that, based upon a decision rendered by the Harmonized System Committee, the subject product is, in fact, properly classifiable within subheading 2932.29.2000, HTSUSA, which provides for lactones: other lactones: aromatic: drugs, dutiable at 7.2 percent *ad valorem*.

Issue:

What is the proper classification under the HTSUSA for moxidectin technical concentrate (CAS# 113507-06-5)?

Law and Analysis:

Classification of merchandise under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI's). As stated in GRI 1, the classification is determined first in accordance with the terms of the headings which must be read in conjunction with the relative section and chapter notes. If GRI 1 fails to classify the goods and if the headings and legal notes do not otherwise require, the remaining GRI's are applied in their appropriate order. The Explanatory Notes to the Harmonized Commodity Description and Coding System (EN's), facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI's.

Moxidectin is comprised of a heterocyclic compound with more than one functional group in the structure. As such, we have determined that the product is properly classifiable under heading 2932, HTSUSA, which provides for "Heterocyclic compounds with oxygen hetero-atom(s) only." We further recognize the recommendations of the Harmonized System Committee in classifying moxidectin under subheading 2932.29, HTSUSA, as a lactone. However, we do not agree with Cyanamid's claim that the product is properly classifiable within subheading 2932.29.2000, HTSUSA, as an aromatic lactone.

According to Additional U.S. Note 2(a) to Section VI, HTSUSA, for the purposes of the tariff schedule, the term "aromatic" refers to chemical compounds containing one or more fused or unfused benzene rings. As evidenced by its chemical structure, moxidectin does not contain any fused or unfused benzene ring(s). Therefore, pursuant to Additional Note 2(a) to Section VI, HTSUSA, the subject product is not an "aromatic" compound for tariff purposes. Thus, it is our determination that moxidectin is properly classifiable in subheading 2932.29.5050, HTSUSA, which provides for, " * * * Lactones: Other lactones: Other, Other."

Holding:

The product, moxidectin, is properly classified under subheading 2932.29.5050, HTSUSA which provides for "Heterocyclic compounds with oxygen hetero-atom(s) only: Lactones: Other lactones: Other, Other" which is dutiable under the general column one rate of 3.7 percent *ad valorem*.

Articles classifiable under subheading 2932.29.5050, HTSUSA, which are products of Argentina, are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

NYRL 871563, dated March 20, 1992, is hereby revoked. In accordance with section 625, this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

JOHN B. ELKINS,
(for John Durant, Director,
Tariff Classification Appeals Division.)

REVOCATION OF CUSTOMS RULING LETTER RELATING TO TARIFF CLASSIFICATION OF DEXTROMETHORPHAN HYDROBROMIDE

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: Notice of revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling pertaining to the tariff classification of Dextromethorphan hydrobromide (CAS 6700-34-1). Notice of the proposed revocation was published November 22, 1995, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after March 18, 1996.

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Food and Chemicals Classification Branch, (202-482-6958).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On November 22, 1995, Customs published a notice in the CUSTOMS BULLETIN, Volume 28, Number 38, proposing to revoke New York Ruling Letter (NYRL) 888922, dated September 23, 1993, which classified the product, Dextromethorphan hydrobromide (CAS 6700-34-1), within subheading 2933.90.7500, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provided for, "Heterocyclic compounds with nitrogen hetero-atom(s) only; nucleic acids and their salts: Other: Aromatic or modified aromatic: Other: Drugs: Other," which was dutiable at 6.9 percent *ad valorem*. No comments were received in response to this notice.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking NYRL 888922 to reflect the proper classification of Dextromethorphan hydrobromide (CAS 6700-34-1).

At this time, we have determined that the product is properly classifiable under subheading 2933.40.2600, HTSUSA, which provides for "Compounds containing a quinoline or isoquinoline ring-system (whether or not hydrogenated), not further fused: Other: Drugs: Other" which is dutiable under the general column one rate of 7.8 percent *ad valorem*. Headquarters Ruling Letter (HRL) 958151 revoking NYRL 888922, is set forth in the Attachment to this document.

Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: January 2, 1996.

JOHN B. ELKINS,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, January 2, 1996.
CLA-2 RR:TC:FC 958151 ASM
Category: Classification
Tariff No. 2933.40.2600

MS. ALICE M. SAKOSITS
IMPORT/SALES COORDINATOR
S S T CORPORATION
635 Brighton Road (P.O. Box 1649)
Clifton, NJ 07015-1649

Re: Revocation of NYRL 888922 concerning the tariff classification of Dextromethorphan Hydrobromide (CAS 6700-34-1).

DEAR MS. SAKOSITS:

This letter concerns the revocation of New York Ruling Letter (NYRL) 888922, dated September 23, 1993, regarding the classification of Dextromethorphan hydrobromide (CAS 6700-34-1). Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993) (hereinafter section 625), notice of the proposed revocation of NYRL 888922 was published November 22, 1995, in the CUSTOMS BULLETIN, Volume 29, Number 47.

Facts:

The subject product is identified as Dextromethorphan hydrobromide and is imported from India for use as an antitussive drug. In NYRL 888922, the merchandise was classified within subheading 2933.90.7500, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provided for, "Heterocyclic compounds with nitrogen Heteroatom(s) only; nucleic acids and their salts: Other: Aromatic or modified aromatic: Other: Drugs: Other," which was dutiable at 6.9 percent *ad valorem*.

Issue:

What is the proper classification under the HTSUSA for Dextromethorphan hydrobromide (CAS 6700-34-1)?

Law and Analysis:

Classification of merchandise under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI's). As stated in GRI 1, the classification is determined first in accordance with the terms of the headings which must be read in conjunction with the relative section and chapter notes. If GRI 1 fails to classify the goods and if the headings and legal notes do not otherwise require, the remaining GRI's are applied in their appropriate order. The Explanatory Notes to the Harmonized Commodity Description and Coding

System (EN's), facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI's.

It has been determined by Customs that Dextromethorphan hydrobromide possesses therapeutic properties as an antitussive drug, and is therefore classifiable under Chapter 29, as a "drug." Further, it is our position that Dextromethorphan hydrobromide contains a "bridged" but not further "fused" isoquinoline ring and should be classified within subheading 2933.40, HTSUSA.

The EN's to subheading 2933.40, HTSUSA, state that this subheading shall include, "Quinoline, isoquinoline, and their derivatives, 2 ring systems comprising a benzene ring fused to a pyridine ring." The functional group features of Dextromethorphan hydrobromide are specifically provided for within subheading 2933.40.2600, HTSUSA, which includes "Compounds containing a quinoline or isoquinoline ring-system (whether or not hydrogenated), not further fused: Other: Drugs: Other."

Holding:

The product, Dextromethorphan Hydrobromide (CAS 6700-34-1), is properly classified under subheading 2933.40.2600, HTSUSA, which provides for "Compounds containing a quinoline or isoquinoline ring-system (whether or not hydrogenated), not further fused: Other: Drugs: Other" which is dutiable under the general column one rate of 7.8 percent *ad valorem*.

NYRL 888922, dated September 23, 1993, is hereby revoked. In accordance with section 625, this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations 19 CFR 177.10(c)(1)).

JOHN B. ELKINS,
(for John Durant, Director,
Tariff Classification Appeals Division.)

MODIFICATION OF CUSTOMS RULING LETTERS RELATING TO TARIFF CLASSIFICATION OF ARTICLES MADE FROM PLAITING MATERIALS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of tariff classification ruling letters.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI Customs Modernization of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057 (1993)), this notice advises interested parties that Customs is modifying five ruling letters pertaining to the tariff classification of decorative wall hangings and baskets made from plaiting materials. Notice of the proposed modification was published November 22, 1995, in the CUSTOMS BULLETIN, Volume 29, Number 47.

EFFECTIVE DATE: This decision is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 18, 1996.

FOR FURTHER INFORMATION CONTACT: Greg Deutsch, Office of Regulations and Rulings, Textile Branch (202) 482-6976.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On November 22, 1995, Customs published a notice in the CUSTOMS BULLETIN, Volume 29, Number 47, proposing to modify five ruling letters pertaining to the classification of decorative wall hangings and baskets made from plaiting materials. In the following ruling letters, Customs classified wall hangings and baskets made essentially from plaiting materials either as other textile furnishing articles, as knotted netting of twine cordage or rope, or as other made up textile articles, in headings 6304, 5608, or 6307 (respectively, Harmonized Tariff Schedule of the United States (HTSUS): New York Ruling Letter (NYRL) 804311, dated November 29, 1994; NYRL 804312, dated November 29, 1994; Laredo District (now Port) Ruling Letter (DD) 804314, dated December 14, 1994; DD 804366, dated December 14, 1994 (Laredo); and DD 804367, dated December 8, 1994 (Newark). The notice indicated Customs intent to classify the goods subject to the above cited rulings in subheading 4602.10, HTSUS, as articles made directly to shape from plaiting materials. No comments were received concerning the matter.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057 (1993)), this notice advises interested parties that Customs is modifying five ruling letters pertaining to the classification of decorative wall hangings and baskets made from plaiting materials. The following Headquarters Ruling Letters modifying these five rulings are attached as Exhibits A through E to this document: 958012, modifying NYRL 804311 (November 29, 1994); 958551, modifying NYRL 804312 (November 29, 1994); 958552, modifying DD 804314 (December 14, 1994); 958553, modifying DD 804366 December 14, 1994; and 958554, modifying DD 804367 (December 8, 1994).

Publications of rulings or decisions pursuant to section 625 does not constitute a change of practice or position as contemplated in section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: December 28, 1995.

HUBBARD VOLENICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, December 28, 1995.

CLA-2 RR:TC:TE 958012 GGD
Category: Classification
Tariff No. 4602.10.8000

MR. BERNARD D. LIBERATI
MORRIS FRIEDMAN & CO.
320 Walnut Street
Philadelphia, PA 19106-3883

Re: Modification of New York Ruling Letter (NYRL) 804311; "Abaca Bat Wall Hanging," articles made directly to shape from plaiting materials; not other textile furnishing articles nor festive articles.

DEAR MR. LIBERATI:

This letter is in response to your request dated May 8, 1995, on behalf of your client, Don Wasserman, International, for reconsideration of NYRL 804311, issued November 29, 1994, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of an article identified as an "Abaca Bat Wall Hanging" imported from the Philippines. A sample was submitted with the request. In NYRL 804311, Customs classified the merchandise in subheading 6304.99.3500, HTSUSA, textile category 899, the provision for "Other furnishing articles, excluding those of heading 9404; Other: Not knitted or crocheted, of other textile materials: Other: Of vegetable fibers (except cotton): Other." We have reviewed that ruling and have found it to be partially in error. The correct classification is as follows.

Pursuant to section 625, Tariff Act of 1930 (19 U.S.C 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993) (hereinafter section 625), notice of the proposed modification of NYRL 804311 was published on November 22, 1995, in the CUSTOMS BULLETIN, Volume 29, Number 47.

Facts:

The sample article, identified as an "Abaca Bat Wall Hanging" and further identified by item no. DS-035G, is a decorative, flat representation of a bat, that is composed of black abaca fibers wrapped around a bat-shaped, metal frame. The item measures approximately 8½ inches in height by 14 inches in width. Within the wire frame is suspended an open-work, netlike mesh "filling" of unspun, untwisted, abaca fibers.

Issues:

- 1) Whether the item is classified in heading 9505, HTSUS, as a festive article.
- 2) If not classifiable as a festive article, whether the item is classifiable in heading 6304, HTSUS, as an other textile furnishing article, or in heading 4602, HTSUS, as an article made from plaiting materials.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI.

Heading 9505, HTSUSA, provides for, among other items festive, carnival or other entertainment articles. The EN to heading 9505 states, in part, that the heading covers:

(A) Festive, carnival or other entertainment articles, which in view of their intended use are generally made of non-durable material. They include:

- (1) Decorations such as festoons, garlands, Chinese lanterns, etc., as well as various decorative articles made of paper, metal foil, glass fibre, etc., for Christ-

mas trees (e.g., tinsel, stars, icicles), artificial snow, coloured balls, bells, lanterns, etc. Cake and other decorations (e.g., animals, flags) which are traditionally associated with a particular festival are also classified here.

In general, merchandise is classifiable in heading 9505, HTSUSA, as a *festive article* when the article, as a whole:

1. is of non-durable material or, generally, is not purchased because of its extreme worth, or intrinsic value (e.g., paper, cardboard, metal foil, glass fiber, plastic, wood);
2. functions primarily as a decoration (e.g., its primary function is not utilitarian); and
3. is traditionally associated or used with a particular festival (e.g., stockings and tree ornaments for Christmas, decorative eggs for Easter)

An article's satisfaction of these three criteria is indicative of classification as a festive article. The motif of an item is not dispositive of its classification and, consequently, does not transform an item into a festive article.

We consider the "abaca bat wall hanging" to be made of non-durable material (since it is not designed for sustained wear and tear, nor is it purchased because of its extreme worth or value). The item is also a primarily decorative in function.

With respect to the third criterion, however, we find that bats are not traditionally associated with a particular festival. Although frightening to some, bats are viewed by others as mammals that provide insect control, fertilizer, etc. Bats are not the same types of articles cited in the EN to 9505, as examples of traditional, festive articles, nor do they particularly relate to Halloween. In light of the above, the goods are not classified in heading 9505, HTSUS, and must be classified elsewhere.

Heading 6304, HTSUS, covers other furnishing articles of textiles. The EN to heading 6304 indicate that the heading covers textile furnishing articles, including wall hangings, for use in ceremonies (e.g., weddings or funerals), and in the home, public buildings, theatres, churches, etc. As noted in the FACTS section, however, the non-metal portion of this wall hanging is composed of **unspun**, untwisted fibers. As such, it is not classifiable as a textile product in heading 6304.

Heading 4602, HTSUS, provides for "Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah." In pertinent part, note 1 to chapter 46, HTSUS, states that:

"[i]n this chapter the expression "*plaiting materials*" means materials in a state or form suitable for plaiting, interlacing or similar processes; it includes straw * * * strips of wood, strips of other vegetable material (for example raffia, narrow leaves or strips cut from broad leaves) or bark, **unspun** [emphasis added] natural textile fibers * * *

Although as previously noted, the "abaca bat wall hanging" is constructed from both wire and fibers, the essential character of the whole is clearly imparted by the unspun natural textile fibers, not the wire. It is our determination that the article is classified in heading 4602, HTSUS. The proper subheading is 4602.10.8000, HTSUSA.

Holding:

The article identified as an "Abaca Bat Wall Hanging" and further identified by item no. DS-035G, is properly classified in subheading 4602.10.8000, HTSUSA, the provision for "Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah: Of vegetable materials: Other: Other: Other." The applicable duty rate is 2.3 percent *ad valorem*.

NYRL 804311, issued November 29, 1994, is hereby modified.

In accordance with section 625, this ruling will become effective 60 days from its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change at practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

HUBBARD VOLENICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, January 2, 1996.

CLA-2 RR:TC:TE 958551 GGD
Category: Classification
Tariff No. 4602.10.8000

MR. BERNARD D. LIBERATI
MORRIS FRIEDMAN & CO.
320 Walnut Street
Philadelphia, PA 19106-3883

Re: Modification of New York Ruling Letter (NYRL) 804312; "'BOO' Halloween Wall Hanging;" articles made directly to shape from plaiting materials; not other textile furnishing articles nor festive articles.

DEAR MR. LIBERATI:

This letter is in response to your request dated May 8, 1995, on behalf of your client, Don Wasserman International, for reconsideration of NYRL 804312, issued November 29, 1994, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of an article identified as a "'BOO' Halloween Wall Hanging" imported from the Philippines. A sample was submitted with the request. In NYRL 804312, Customs classified the merchandise in subheading 6304.99.3500, HTSUSA, textile category 899, the provision for "Other furnishing articles, excluding those of heading 9404: Other: Not knitted or crocheted, of other textile materials: Other: Of vegetable fibers (except cotton): Other." We have reviewed that ruling and have found it to be partially in error. The correct classification is as follows:

Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993) (hereinafter section 625), notice of the proposed modification of NYRL 804312 was published on November 22, 1995, in the CUSTOMS BULLETIN, Volume 29, Number 47.

Facts:

The sample article, identified as "Halloween Craft Assortment" and further identified by item no. DS-035G, is a decorative, flat layout of the exclamation "BOO," measuring approximately 9 inches in height by 17½ inches in width. The wall hanging is composed of black abaca fibers wrapped around the wire inner and outer edges of each of the 3 connected letters. The edges comprise metal frames within which is suspended openwork, net-like mesh "filling" of unspun, untwisted, abaca fibers.

Issues:

- 1) Whether the item is classified in heading 9505, HTSUS, as a festive article.
- 2) If not classifiable as a festive article, whether the item is classifiable in heading 6304, HTSUS, as an other textile furnishing article, or in heading 4602, HTSUS, as an article made from plaiting materials.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI.

Heading 9505, HTSUSA, provides for, among other items, festive, carnival or other entertainment articles. The EN to heading 9505 states, in part, that the heading covers:

- (A) Festive, carnival or other entertainment articles, which in view of their intended use are generally made of non-durable material. They include:

(1) Decorations such as festoons, garlands, Chinese lanterns, etc., as well as various decorative articles made of paper, metal foil, glass fibre, etc., for Christmas trees (e.g., tinsel, stars, icicles), artificial snow, coloured balls, bells, lanterns, etc. Cake and other decorations (e.g., animals, flags) which are traditionally associated with a particular festival are also classified here.

In general, merchandise is classifiable in heading 9505, HTSUSA, as a *festive article* when the article, as a whole:

1. is of non-durable material or, generally, is not purchased because of its extreme worth, or intrinsic value (e.g., paper, cardboard, metal foil, glass fiber, plastic, wood);
2. functions primarily as a decoration (e.g., its primary function is not utilitarian); and
3. is traditionally associated or used with a particular festival (e.g., stockings and tree ornaments for Christmas, decorative eggs for Easter).

An article's satisfaction of these three criteria is indicative of classification as a festive article. The motif of an item is not dispositive of its classification and, consequently, does not transform, an item into a festive article.

We consider the "BOO" wall hanging" to be made of non-durable material (since it is not designed for sustained wear and tear, nor is it purchased because of its extreme worth or value). The item is also primarily decorative in function.

With respect to the third criterion, however, we find that neither wall hanging nor the word "boo" is traditionally associated with a particular festival. Although the word is sometimes used to frighten people, it has other meanings and uses, such as to express disapproval, contempt, etc. A wall hanging of the word "boo" is not the same type of article as those cited in the EN to 9505, as examples of traditional, festive articles, nor does it particularly relate to Halloween. In light of the above, the item is not classified in heading 9505, HTSUS, and must be classified elsewhere.

Heading 6304, HTSUS, covers other furnishing articles of textiles. The EN to heading 6304 indicate that the heading covers textile furnishing articles, including wall hangings, for use in ceremonies (e.g., weddings or funerals), and in the home, public buildings, theatres, churches, etc. As noted in the FACTS section, however, the non-metal portion of this wall hanging is composed of unspun, untwisted fibers. As such, it is not classifiable as a textile product in heading 6304.

Heading 4602, HTSUS, provides for "Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah." In pertinent part, note 1 to chapter 46, HTSUS, states that:

"[i]n this chapter the expression *"plaiting materials"* means materials in a state or form suitable for plaiting, interlacing or similar processes; it includes straw * * * strips of wood, strips of other vegetable material (for example, raffia, narrow leaves or strips cut from broad leaves) or bark, **unspun** [emphasis added] natural textile fibers * * *"

Although as previously noted, the "BOO" Halloween Wall Hanging" is constructed from both wire and fibers, the essential character of the whole is clearly imparted by the unspun natural textile fibers, not the wire. It is our determination that the article is classified in heading 4602, HTSUS. The proper subheading is 4602.10.8000, HTSUS.

Holding:

The article identified both as a "BOO" Halloween Wall Hanging" and a "Halloween Craft Assortment" (item no. DS-035G), is properly classified in subheading 4602.10.8000, HTSUSA, the provision for "Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah: Of vegetable materials: Other: Other: Other." The applicable duty rate is 2.3 percent *ad valorem*.

NYRL 804312, issued November 29, 1994, is hereby modified.

In accordance with section 625, this ruling will become effective 60 days from its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

JOHN DURANT,

Director,

Tariff Classification Appeals Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, January 2, 1996.

CLA-2 RR:TC:TE 958552 GGD
Category: Classification
Tariff No. 4602.10.1800

MR. BERNARD D. LIBERATI
MORRIS FRIEDMAN & CO.
320 Walnut Street
Philadelphia, PA 19106-3883

Re: Modification of Laredo District (now Port) Ruling Letter (DD) 804314; "Abaca Baskets with Handles;" articles made directly to shape from plaiting materials; not knotted netting of twine, cordage or rope.

DEAR MR. LIBERATI:

This letter is in response to your request dated May 8, 1995, on behalf of your client, Don Wasserman, International, reconsideration of DD 804314, issued December 14, 1994, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a pair of round abaca baskets with handles, imported from the Philippines. A sample was submitted with the request. In DD 804314, Customs classified the merchandise in subheading 5608.90.3000, HTSUSA, the provision for "Knotted netting of twine, cordage or rope; made up fishing nets and other made up nets, of textile materials: Other: Other: Other." We have reviewed that ruling and have found it to be partially in error. The correct classification is as follows.

Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993) (hereinafter section 625), notice of the proposed modification of DD 804314 was published on November 22, 1995, in the CUSTOMS BULLETIN, Volume 29, Number 47.

Facts:

The samples (which, unlike the subjects of DD 804314, are heart-shaped), identified as "Abaca Baskets with Handles" and further identified by item no. DS-015, are 2 baskets with handles, measuring approximately 5 inches by 6 inches, and 6 inches by 7 inches, respectively. From the basket bottoms to the tops of the handles, the items measure 7 inches and 8½ inches in height, respectively. The baskets' frames and handles are composed of unspun abaca fibers wrapped around wire. Within the basket frames is a net-like, openwork mesh, formed by unspun, untwisted abaca fibers.

Issue:

Whether the baskets are classifiable in heading 5608, HTSUS, as knotted netting of twine, cordage or rope * * * other made up nets, of textile materials; or in heading 4602, HTSUS, as articles made from plaiting materials.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI.

Heading 5608, HTSUS, essentially covers knotted netting composed of materials that have been twisted, spun, braided, or otherwise woven together. As noted in the FACTS section, the goods are composed of wire and **unspun**, untwisted fibers. As such, the baskets are not classifiable as textile products of heading 5608.

Heading 4602, HTSUS, provides for "Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah." In pertinent part, note 1 to chapter 46, HTSUS, states that:

"[i]n this chapter the expression "*plaiting materials*" means materials in a state or form suitable for plaiting, interlacing or similar processes; it includes straw * * * strips of wood, strips of other vegetable material (for example, raffia, narrow leaves or strips cut from broad leaves) or bark, **unspun** [emphasis added] natural textile fibers * * *

Although each basket is constructed from both wire and abaca, the essential character of the whole is clearly imparted by the unspun, untwisted, natural textile fibers, not the wire. We find that the articles are classified in heading 4602, HTSUS. The proper subheading is 4602.10.1800, HTSUSA.

Holding:

The "Abaca Baskets with Handles" (item no. DS-015) are properly classified in subheading 4602.10.1800, HTSUSA, the provision for "Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah: Of vegetable materials: Other baskets and bags, whether or not lined: Other: Other." The applicable duty rate is 4.5 percent *ad valorem*.

DD 804314, issued December 14, 1994, is hereby modified.

In accordance with section 625, this ruling will become effective 60 days from its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

JOHN DURANT,
Director,
Tariff Classification Appeals Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, January 2, 1996.
CLA-2 RR:TC:TE 958553 GGD
Category: Classification
Tariff No. 4602.10.1800

MR. BERNARD D. LIBERATI
MORRIS FRIEDMAN & CO.
320 Walnut Street
Philadelphia, PA 19106-3883

Re: Modification of Laredo District (now Port) Ruling Letter (DD) 804366; "Abaca Hal-
loween Basket with Handle;" articles made directly to shape from plaiting materials;
not knotted netting of twine, cordage or rope; not festive article.

DEAR MR. LIBERATI:

This letter is in response to your request dated May 8, 1995, on behalf of your client, Don Wasserman, International, reconsideration of DD 804366, issued December 14, 1994, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a round decorative basket with a handle, imported from the Philippines. A sample was submitted with the request. In DD 804366, Customs classified the merchandise in subheading 5608.90.3000, HTSUSA, the provision for "Knotted netting of twine, cordage or rope; made up fishing nets and other made up nets, of textile materials: Other: Other: Other." We have reviewed that ruling and have found it to be partially in error. The correct classification is as follows.

Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Imple-

mentation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993) (hereinafter section 625), notice of the proposed modification of DD 804366 was published on November 22, 1995, in the CUSTOMS BULLETIN, Volume 29, Number 47.

Facts:

The sample article, identified as a "Halloween Basket" and further identified by item no. DS-036, is a round basket with a handle and an attached ghost figure holding a tiny pumpkin. The basket measures approximately 6 inches in diameter, and 8 inches from the basket's bottom to the top of the handle. The cost figure measures approximately 6 inches in length by 3½ inches in width and is composed of unspun, untwisted fibers, which are bundled to form the head. The basket's frame and handle are composed of unspun abaca fibers wrapped around wire. Within the frame is a net-like, openwork mesh, formed by unspun, untwisted abaca fibers.

Issues:

- 1) Whether the item is classified in heading 9505, HTSUS, as a festive article.
- 2) If not classifiable as a festive article, whether the item is classifiable heading 5608, HTSUS, as knotted netting of twine, cordage or rope * * * other made up nets, of textile materials; or in heading 4602, HTSUS, as articles made from plaiting materials.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI.

Heading 9505, HTSUSA, provides for, among other items, festive, carnival or other entertainment articles. The EN to heading 9505 states, in part, that the heading covers:

(A) Festive, carnival or other entertainment articles, which in view of their intended use are generally made of non-durable material. They include:

- (1) Decorations such as festoons, garlands, Chinese lanterns, etc., as well as various decorative articles made of paper, metal foil, glass fibre, etc., for Christmas trees (e.g., tinsel, stars, icicles), artificial snow, coloured balls, bells, lanterns, etc. Cake and other decorations (e.g., animals, flags) which are traditionally associated with a particular festival are also classified here.

In general, merchandise is classifiable in heading 9505, HTSUSA, as a *festive article* when the article, as a whole:

1. is of non-durable material or, generally, is not purchased because of its extreme worth, or intrinsic value (e.g., paper, cardboard, metal foil, glass fiber, plastic, wood);
2. functions primarily as a decoration (e.g., its primary function is not utilitarian); and
3. is traditionally associated or used with a particular festival (e.g., stockings and tree ornaments for Christmas, decorative eggs for Easter).

An article's satisfaction of these three criteria is indicative of classification as a festive article. The motif of an item is not dispositive of its classification and, consequently, does not transform an item into a festive article.

We consider the "Halloween Basket" to be made of non-durable material (since it is not designed for sustained wear and tear, nor is it purchased because of its extreme worth or value). The item fails, however, to satisfy the second and third criteria. Although this article has a decorative aspect, baskets, by their very nature, are primarily functional. We also find that ghosts, even those holding pumpkins, are not traditionally associated with a particular festival. Ghosts are often the subject of mythology, plays, movies, comic books, and cartoons bearing no significance to a festival or holiday. With regard to pumpkins, Customs classifies jack-o'-lanterns which are 1) of a pumpkin shape or form, and 2) capable of illumination as traditional Halloween articles. Although a ghost and a pumpkin may suggest a festive motif, the motif does not transform the classification of an item, particularly one that is functional, into a festive article. In light of the above, the basket is not classified in heading 9505.

Heading 5608, HTSUS, essentially covers knotted netting composed of materials that have been twisted, spun, braided, or otherwise woven together. As noted in the FACTS section, the basket is essentially composed of wire and **unspun**, untwisted fibers. As such, the baskets are not classifiable as textile products of heading 5608.

Heading 4602, HTSUS, provides for "Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah." In pertinent part, note 1 to chapter 46, HTSUS, states that:

"[i]n this chapter the expression "*plaiting materials*" means materials in a state or form suitable for plaiting, interlacing or similar processes; it includes straw * * * strips of wood, strips of other vegetable material (for example, raffia, narrow leaves or strips cut from broad leaves) or bark, **unspun** (emphasis added) natural textile fibers * * *

Although the basket is constructed from both wire and abaca, the essential character of the whole is clearly imparted by the unspun, untwisted, natural textile fibers, and not by the wire. The item is thus classified in heading 4602, HTSUS. The proper subheading is 4602.10.1800, HTSUSA.

Holding:

The article identified as a "Halloween Basket," and further identified, by item no. DS-036, is properly classified in subheading 4602.10.1800, HTSUSA, the provision for "Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah: Of vegetable materials: Other baskets and bags, whether or not lined: Other: Other." The applicable rate of duty is 4.5 percent *ad valorem*.

DD 804366, issued December 14, 1994, is hereby modified.

In accordance with section 625, this ruling will become effective 60 days from its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

JOHN DURANT,

Director,

Tariff Classification Appeals Division.

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY,

U.S. CUSTOMS SERVICE,

Washington, DC, January 2, 1996.

CLA-2 RR:TC:TE 958554 GGD

Category: Classification

Tariff No. 4602.10.8000

MR. BERNARD D. LIBERATI
MORRIS FRIEDMAN & CO.
320 Walnut Street
Philadelphia, PA 19106-3883

Re: Modification of District Ruling Letter (DD) 804367; "Grass Craft Hats;" articles made directly to shape from plaiting materials; not other made up textile articles.

DEAR MR. LIBERATI:

This letter is in response to your request dated May 8, 1995, on behalf of your client, Don Wasserman, International, for reconsideration of Newark District (now Port) Ruling Letter (DD) 804367, issued December 8, 1994, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of articles identified as "Grass Craft Hats" imported from the Philippines. A sample was submitted with the request. In DD 804367, Customs classified the merchandise in subheading 6307.90.9989, HTSUSA, the provision for "Other made up articles, including dress patterns: Other: Other: Other, Other: Other." We have reviewed that ruling and have found it to be partially in error. The correct classification is as follows.

Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993) (hereinafter section 625), notice of the proposed modification of DD 804367 was published on November 22, 1995, in the CUSTOMS BULLETIN, Volume 29, Number 47.

Facts:

The sample article, identified as "3 PC. Sinamay Hats" and further identified by item no. DS-018, is a retail package of 3 hats (with brims measuring approximately 4 inches, 6 inches, and 6 inches in diameter) that are for decorative purposes only (e.g., to be used as wall hangings). The hats appear to be constructed of sparsely interwoven, unspun, untwisted, vegetable fibers said to be abaca. The items have low crowns that rises approximately 1 inch above the brims.

Issue:

Whether the items are classifiable in heading 6307, HTSUS, as an other made up textile articles, or in heading 4602, HTSUS, as articles made from plaiting materials.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI.

As noted above, this ruling reconsiders whether the decorative hats are more properly classified as made up textile articles, or as articles made from plaiting materials.

Heading 6307, HTSUS, covers other made up textile articles, including dress patterns. The EN to heading 6307 indicate that the heading covers made up articles of any textile material which are not included more specifically in other headings of Section XI or elsewhere in the Nomenclature. As noted in the FACTS section, examination of the sample indicates that the goods are composed of **unspun**, untwisted fibers. As such, the hats are not classifiable as textile products.

Heading 4602, HTSUS, provides for "Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah." In pertinent part, note 1 to chapter 46, HTSUS, states that:

"[i]n this chapter the expression "**plaiting materials**" means materials in a state or form suitable for plaiting, interlacing or similar processes; it includes straw * * * strips of wood, strips of other vegetable material (for example, raffia, narrow leaves or strips cut from broad leaves) or bark, **unspun** [emphasis added] natural textile fibers * * *."

We find that the "grass craft hats" are constructed from plaiting materials consisting of unspun natural textile fibers, and are thus classified in heading 4602, HTSUS. The proper subheading is 4602.10.8000, HTSUSA.

Holding:

The article identified as both "Grass Craft Hats" and "3 PC. Sinamay Hats" (item no. DS-018) is properly classified in subheading 4602.10.8000, HTSUSA, the provision for "Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah: Of vegetable materials: Other: Other: Other." The applicable duty rate is 2.3 percent *ad valorem*.

DD 804367, issued December 8, 1994, is hereby modified.

In accordance with section 625, this ruling will become effective 60 days from its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

JOHN DURANT,
Director,
Tariff Classification Appeals Division.

**MODIFICATION OF RULING LETTER RELATING TO
TARIFF CLASSIFICATION OF HYDRAULIC LIFTING ROLLERS**

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling relating to the tariff classification of hydraulic lifting rollers. These articles utilize hydraulic pressure to raise or lift heavy tools in large power presses. Notice of the proposed modification was published on November 22, 1995, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after March 18, 1996.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Tariff Classification Appeals Division (202) 482-7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On November 22, 1995, Customs published a notice in the CUSTOMS BULLETIN, Volume 29, Number 47, proposing to modify NY 863582, dated June 19, 1991, which classified the DLF hydraulic lifting rollers as other special attachments for machine tools, in subheading 8466.30.50, Harmonized Tariff Schedule of the United States (HTSUS). No comments were received in response to this notice. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying NY 863582 to reflect the proper classification of hydraulic lifting rollers in subheading 8428.90.00, HTSUS, a provision for other lifting, handling, loading or unloading machinery. The rate of duty under this provision is 1.6 percent *ad valorem*. HQ 958621 revoking NY 863582 is set forth as the Attachment to this document.

Publication of rulings or decisions pursuant to 19 U.S.C 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: December 28, 1995.

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, December 28, 1995.

CLA-2 RR:TC:MM 958621 JAS
Category: Classification
Tariff No. 8428.90.00

MR. MICHAEL B. MAROGIL
NNR AIRCARGO SERVICE (USA) INC.
765 Dillon Drive
Wood Dale, IL 60191-1596

Re: NY 863582 Modified; DLF hydraulic lifting rollers, hydraulic roller die lifters, lifting, handling, loading, unloading machinery; Section XVI, Note 2; parts and accessories of machine tools, including special attachments for machine tools, subheading 8466.30.30.

DEAR MR. MAROGIL:

In NY 863582, dated June 19, 1991, Issued to you on behalf of **AIOI (USA) Inc.**, certain model DLF hydraulic lifting rollers, were held to be classifiable. In subheading 8466.30.30, Harmonized Tariff Schedule of the United States (HTSUS), as other special attachments solely or principally used with machine tools.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C 1625(c)(1)), as amended by section 623 of Title VI (customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NY 863582 was published on November 22, 1995, in the CUSTOMS BULLETIN, Volume 29, Number 47.

Facts:

The articles in question are the model DLF hydraulic lifting rollers used with heavy machine tool presses. Hydraulic lifting rollers, also called hydraulic roller die lifters or hydraulic rollblocks, are used with large power presses to lift, position or otherwise manipulate dies or tools used with the press. As imported, these articles typically consist of a machined steel block drilled and ported to provide a passage for pressurized hydraulic fluid. Each block has numerous holes machined into it that act as cylinders, each of which is fitted with a U-shaped piston. A ball or transfer unit consisting of a metal body encasing a large, hollow steel ball or roller which freely rotates on a bed of smaller, solid steel balls, is inserted into each piston. When hydraulic pressure is applied the pistons move upward inside the cylinders causing the balls or rollers to raise or lower. This permits heavy dies or tools used with the press to be lifted and handled.

The provisions under consideration are as follows:

8428	Other lifting, handling, loading or unloading machinery * * *;
8428.90.00	Other machinery * * * 1.6 percent
8466	* * * [D]ividing heads and other special attachments for machine tools * * *;
8466.30	Dividing heads and other special attachments for machine tools: Other special attachments:
8466.30.30	Machines * * * 3.5 percent

Issue:

Whether hydraulic roller die lifters are lifting or handling machinery of heading 8428.

Law and Analysis:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The **Harmonized Commodity Description And Coding System Explanatory Notes (ENs)** constitute the official interpretation of the Harmonized System. While not

legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the notes should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Subject to certain exceptions that are not relevant here, goods that are identifiable parts of machines or apparatus of chapters 84 or 85 are to be classified in accordance with Section XVII, Note 2, HTSUS. Note 2(a) states that parts which are goods included in any of the headings of chapters 84 and 85 (other than headings 8485 and 8548) are in all cases to be classified in their respective headings. Notes 2(b) and © provide for parts that are not classifiable by virtue of Note 2(a).

In this case, literature on hydraulic die lifters believed to be identical to the ones in issue here describe how the pistons in each segment "raise" the whole ledge thus allowing the tool to be "moved" in a linear direction. The literature describes how the balls of the transfer unit are "raised", thus guaranteeing easy "handling" and "positioning" of the press tools. The name die **lifter** is indicative of their function.

Relevant ENs, at p. 1197, indicate that heading 84.28 covers a wide range of machinery for the mechanical handling of materials, goods, etc. that remain in the heading even if specialized for a particular industry. Additional ENs, at p. 1200, state that lifting or handling devices are often used with furnaces, converters, rolling mills, etc., e.g., machines for inserting, handling or withdrawing the pieces being worked; for manipulating doors, covers, hearths, etc. Machines used in certain types of furnaces for inserting or removing, by the action of cylinders fitted with rams or pistons, the objects being treated in the furnace.

The function and design of the hydraulic lifting rollers in issue, together with the cited ENs, indicate that they perform a lifting or handling function. Under Section XVI, Note 2(a), they are goods included in heading 8428.

Holding:

Under the authority of GRI 1, the DLF hydraulic lifting rollers are provided for in heading 8428. They are classifiable in subheading 8428.90.00, HTSUS, as other machinery.

NY 863592, dated June 19, 1991, is modified accordingly. In accordance with 19 U.S.C. 1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

PROPOSED MODIFICATION OF RULING LETTER RELATING TO TARIFF CLASSIFICATION OF A CARPET

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to the tariff classification of a carpet. Comments are invited on the correctness of the proposed ruling.

EFFECTIVE DATE: Comments must be received on or before February 16, 1996.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service Office of Regulations and Rulings, Attention: Tariff Classification Appeals Division, 1301 Constitution Avenue NW, (Franklin Court) Washington, DC 20229. Comments submitted may be inspected at the Tariff Classification Appeals Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th Street, NW, Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cathy Braxton, Textile Branch (202) 482-7048.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to the tariff classification of a carpet.

In District Ruling Letter (DD) 812833, dated July 21, 1995, a tufted carpet was classified in subheading 5702.49.1080 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for carpets and other floor coverings, woven pile carpet of cotton, not tufted or flocked. DD 812833 is set forth in Attachment A to this document.

Customs Headquarters is of the opinion that the subject carpet is "tufted" for tariff classification purposes. Therefore, Customs intends to modify DD 812833 to reflect the proper classification of the tufted carpet in subheading 5703.90.0000, which provides for carpets and other textile floor coverings, tufted, whether or not made up: of other textile materials. Proposed HQ 958388 modifying DD 812833 is set forth in Attachment B to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: December 28, 1995.

HUBBARD VOLENICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New Orleans, LA, July 21, 1995.
CLA-2-V:NO:CO:FNIS:H05 SSS 812833
Category: Classification
Tariff No. 5702.49.1080

MS. PURIFICACION ABUSTAN
HOMEMAKER
295 Fifth Avenue
New York, NY 10016-7186

Re: The tariff classification of woven carpets, Style Corsica, from India.

DEAR MS. ABUSTAN:

In your letter dated July 10, 1995, you requested a classification ruling regarding certain woven carpets, Style Corsica, from India.

The instant carpets are made from 100% cotton yarns woven into the shape of a rectangle on a power loom. The carpet is then hand tufted with 100% cotton yarns into various designs and the tufts are cut to form a pile look. The tufts, then, do not meet the definition of "tufted" as used in HTS 5703, i.e., made on a tufting machine. The pile design does not cover the entire surface of the carpet, but leaves spaces for the woven mat to show through. The short sides of the carpet are fitted with hand knotted fringe.

The applicable subheading for the carpets will be 5702.49.1080, Harmonized Tariff Schedule of the United States (HTS), which provides for Carpets and other floor coverings, woven, not tufted or flocked, whether or not made up, including "Kelem", "Schumacks", "Karanamie and similar hand-woven rugs: Other [than those of the named styles or those of pile construction, not made up], of pile construction, made up: Of other textile materials [than wool or man-made textile materials]: Of cotton: Other [than those not made on a power-driven loom]. The duty rate will be 3.8% *ad valorem*.

HTS 5702.49.1080 falls within textile category designation 369. As a product of India this merchandise is subject to visa requirements based upon international textile trade agreements.

The designated textile and apparel category may be subdivided into parts. If so, visa requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

Please note the ruling (indicator) number on the top center of the first page of this letter. Including this number with the ABI transmission of the Customs entry may entitle you to paperless processing of type 01 entries for the merchandise covered by this ruling. The filer should make any software modifications necessary to implement this stream-lined processing. If we can be of any assistance in this endeavor, please contact ACS Specialist Walter Vaughn at (504) 589-2082.

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

SAMUEL L. SMYTHE,
(for Joanne C. Cornelison,
Port Director.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:TC:TE 958338 CAB
Category: Classification
Tariff No. 5703.90.0000

PURIFICACION ABUSTAN
HOMEMAKER INDUSTRIES
295 Fifth Avenue
New York, NY 10016-7186

Re: Modification of DD 812833, dated July 21, 1995; Heading 5703; Heading 5702; classification of tufted rug.

DEAR MS. ABUSTAN:

This is regarding District Ruling Letter (DD) 812833 issued to you by the Port Director at the Port of New Orleans July 21, 1995. After reviewing this ruling, Customs Headquarters believes that it was in error. DD 812833 classified a carpet in subheading 5702.49.1080 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which is the provision for carpets and other floor coverings, woven pile carpet of cotton, not tufted or flocked. Customs Headquarters believes that the article is properly classifiable in subheading 5703.90.0000, HTSUSA, which provides for carpets and other textile floor coverings, tufted, whether or not made up, of other textile materials and DD 812833 should be modified to reflect the correct tariff classification.

Facts:

The article at issue is a hand tufted cotton rug produced in India. The rug, Style Corsica, is constructed from cotton yarns which have been hand tufted into a pre-existing woven base fabric. The tufts are sheared. The warp yarns of the base fabric extend beyond the edge of the rug to form a hand knotted fringe. There are sections in the rug that have not been tufted and the base fabric is visible.

Issue:

Whether the subject rug is considered "tufted" for tariff classification purposes and is classifiable under Heading 5703, HTSUSA?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI's taken in order.

Heading 5703, HTSUSA, is the provision for carpets and other textile floor coverings, woven, not tufted or flocked, whether or not made up, including "Kelem", "Schumacks", "Karamanie" and similar hand-woven rugs. The Explanatory Notes to the Harmonized Commodity Description and Coding System (EN), although not legally binding, are the official interpretation of the tariff at the international level. The EN to Heading 5703, states the following, in pertinent part:

This heading covers tufted carpets and other tufted textile floor covering's produced on tufting machines which, by means of a system of needles and hooks, insert textile yarn into a pre-existing backing (usually a woven fabric or a nonwoven) thus producing loops, or if the needles and hooks are combined with a cutting device, tufts. The yarns forming the pile are then normally fixed by a coating of rubber or plastics. Usually before the coating is allowed to dry it is either covered by a secondary backing of loosely woven textile material, e.g., jute, or by foamed rubber.

In DD 812833, the subject rug was classified under subheading 5702.49.1080, HTSUSA, the provision for carpets and other woven floor coverings that are not tufted. DD 812833 states that the subject merchandise is hand tufted which does not meet the definition of "tufted" as used in the EN to Heading 5703 which specifically discusses tufts that are produced on tufting machines. The EN to Heading 5703, HTSUSA, define "tufted" as the

inserting of yarns into a pre-existing backing. In this case, cotton yarns have been hand tufted into a pre-existing woven base fabric. Even though the EN specifically refers to machine tufting, it is Customs opinion that the EN was not intended to exclude rugs that had been tufted by hand. Therefore, the subject rug is properly classifiable under Heading 5703, HTSUSA.

Holding:

Based on the foregoing, the subject rug is classifiable in subheading 5703.90.0000, HTSUSA, which is the provision for carpets and other textile floor coverings, tufted, whether or not made up: of other textile materials. The applicable rate of duty is 7.2 percent *ad valorem* and there is no textile restraint category. DD 812833 is hereby modified.

JOHN DURANT,

Director,

Tariff Classification Appeals Division.

1. The first part of the paper is devoted to a general discussion of the problem of the existence of solutions of the system of equations (1) for arbitrary values of the parameters α and β . It is shown that the system has solutions for arbitrary values of the parameters α and β if and only if the condition $\alpha + \beta = 1$ is satisfied.

2. In the second part of the paper the problem of the existence of solutions of the system of equations (1) for arbitrary values of the parameters α and β is solved. It is shown that the system has solutions for arbitrary values of the parameters α and β if and only if the condition $\alpha + \beta = 1$ is satisfied.

3. In the third part of the paper the problem of the existence of solutions of the system of equations (1) for arbitrary values of the parameters α and β is solved. It is shown that the system has solutions for arbitrary values of the parameters α and β if and only if the condition $\alpha + \beta = 1$ is satisfied.









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